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BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL )  
DEVELOPMENT PERMIT ISSUED BY )  
SAN JUAN COUNTY TO WILLIAM )  
ROBERT AND DOREE F. WEBB, )  
d.b.a. WEBB CAMP )  
HENRY AND JUNE CRUVER, )  
Appellants, )  
v. )  
SAN JUAN COUNTY and WILLIAM )  
ROBERT AND DOREE WEBB, d.b.a. )  
WEBB CAMP, )  
Respondents. )

SHB No. 202

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

PER ROBERT E. BEATY:

This matter, a request for review of a substantial development permit issued by San Juan County to William R. and Doree F. Webb, d.b.a. Webb Camp, came before the Shorelines Hearings Board, Robert E, Beaty (presiding), Robert F. Hintz, Chris Smith, Walt Woodward and Gerald D. Probst (designee of Bert L. Cole for this matter), at Friday Harbor,

1 Washington. Hearings were held at the Grange Hall in Friday Harbor on  
2 March 22 and 23, 1976.

3 Appellants appeared through their attorney, Roger M. Leed, for part  
4 of the hearing and pro se for the remainder; respondent San Juan County  
5 appeared through special deputy prosecuting attorney, John Nason, and  
6 respondents Webb appeared through David Strickland, promoter of the  
7 project in question. The proceedings were recorded by court reporters  
8 Diane Attleson and John Valenzuela.

9 From testimony heard, exhibits examined, and arguments and briefs  
10 considered, the Shorelines Hearings Board makes these:

11 FINDINGS OF FACT

12 I

13 On March 26, 1975, William and Doree Webb applied to San Juan  
14 County for a substantial development permit to carry on an aquaculture  
15 project at the site of their property at Westcott Bay on San Juan Island.  
16 The aquaculture project, which is intended to eventually produce  
17 commercial quantities of oysters in grow-out racks beneath the water  
18 and clams on an artificially gravelled beach, will be managed by David  
19 Strickland and Thomas C. Starr, d.b.a. San Juan Sea Farms, Inc.  
20 Subsequent to the application, the County received extensive public  
21 comment on the project and undertook considerable investigation of the  
22 project (a detailed chronology of events is included in Exhibit R-2).  
23 The substantial development permit before the Board was granted on  
24 August 25, 1975.

25 II

26 The Webbs own approximately 90 acres on the upland of Westcott Bay

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1 which they acquired in 1962 and operated as a combination summer camp  
2 and summer school for teenage boys until 1965. The site includes  
3 approximately one-half mile of beach with a 450 foot pier on tidelands  
4 leased from the Department of Natural Resources, one home and  
5 miscellaneous camp buildings. The site adjoins the English Camp  
6 National Historic Park and single family residences built subsequent to  
7 the Webb's acquisition of the site in question. The residents of the  
8 adjoining property are largely opposed to the project, appellants  
9 Cruver included.

### 10 III

11 Westcott Bay is an unpolluted body of water which Dr. Richard  
12 Strathman and Dr. A. O. Dennis Willows of the University of Washington  
13 estimate contains roughly two and one-half to five million cubic meters  
14 of water. A fairly good degree of flushing exists in the bay though  
15 sufficient knowledge of tidal patterns and related phenomena is not  
16 available to state with any degree of assurance how vigorous a flushing  
17 action exists at the aquacultural site. The present fauna of the bay  
18 include several varieties of clams in abundance, dungeness crab, and  
19 oysters which have apparently declined in quantity with the coming of  
20 more intensive residential development around the bay. Westcott Bay is  
21 navigable for most of its length and recreational boating and water  
22 skiing are both carried on by residents of the bay. The proposed aqua-  
23 culture site sits at one of the narrower passages of the bay (approx-  
24 imately a 1,650 foot passage, see Exhibit A) by which boaters and water  
25 skiers would have to pass if the project were completed. With the  
26 project in full production a 600 foot channel would remain for

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1 | navigational purposes.

2 | IV

3 |       The project, though somewhat more extensive as originally proposed,  
4 | now calls for an underwater grow-out facility, the addition of a small  
5 | crane to the present pier, and the addition of gravel to a portion of  
6 | the existing beach for a pilot study in growing clams. The permit provide  
7 | that no surface rafts shall be installed and no buildings will be placed  
8 | on the pier without an additional permit. If the present project is  
9 | successful, additional shoreside facilities for rearing ponds might  
10 | eventually be sought. The parties' lease with the Department of Natural  
11 | Resources provides for the removal of all improvements upon termination  
12 | of the project, and if that removal is not accomplished in nine months,  
13 | the county will perform such removal at the expense of the applicants.

14 |       The project as proposed will cover approximately 28 of the  
15 | approximately 400 acres underlying Westcott Bay with a maximum of five  
16 | to eight acres in use at any one time. San Juan Sea Farms will utilize  
17 | about two acres a year for the first five years building up to a total  
18 | of eight producing acres at the end of the initial five-year project.  
19 | Production will occur in molded plastic trays (modules) which are  
20 | attached to the bottom of the bay and stacked one above the other.  
21 | Eventually, 2,000 modules will be in use. The top of the trays will  
22 | ordinarily be below water level though a portion of them might be visible  
23 | during some low tide conditions. When oysters are in full production on  
24 | the modules, San Juan Sea Farms plans to harvest approximately one-fifth  
25 | of the trays in any one year and replace those trays on another portion  
26 | of the 28-acre site. The net effect would be a "leap frogging" action

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as one portion of the area is freed from production and the trays therefrom moved to another part of the site. Eventually it is estimated by the developers that they will harvest 5,000 bushels of oysters a year from the underwater modules.

Apart from the trays, which are anchored to the bottom, and the flotation devices contained therein, there will be no permanent structure surrounding the 5-8 acres in use at any given time, and the site will be marked by buoys and signs warning boats of its existence. The Army Corps of Engineers has apparently suggested that lights be installed at the corners of the project, as navigational aids. The project will not be visible from English Camp and inconspicuous from most of the homes on the bay.

It is anticipated that when the project is in full production, trucks (larger than pick-up size) will enter and leave the site twice daily.

## V

There are a limited number of sites on Puget Sound which are suitable for intensive aquaculture. Comparatively warm, clean water, rich in nutrients, is required for optimum grow-out. As such, Westcott Bay is well suited for this purpose. However, the density of the oyster population in the proposed modules would far exceed any which might occur naturally. This could create several problems. The accumulation of feces and pseudofeces (food materials passed through the siphoning system of the oysters but not ingested) below the grow-out modules may have a significant impact on the immediate area and surrounding sea floor. Specifically, it may degrade the water quality and drive away certain important marine animals such as dungeness crab. There is no

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1 literature to predict the degree of impact created by this accumulation,  
2 but the area surrounding one salmon rearing project in South Puget Sound  
3 recovered quickly when the salmon rearing pens were removed. In  
4 addition, the University of Washington Friday Harbor Laboratories  
5 estimate (Exhibit R-2) that a population of 720,000 adult oysters on the  
6 site while feeding, would pump approximately 260,000 to 520,000 cubic  
7 meters of water a day or roughly one-tenth of the volume of the bay.  
8 Ingestion and filtering of small organisms could have a significant  
9 impact on the number of invertebrate larvae in the bay, including clams.  
10 Fish are expected to be less effected because their larvae are more  
11 mobile. "Dissolved excreted material or decomposition of feces . . .  
12 could alter the nutrient cycles and plankton populations of the bay. . .  
13 [though] phytoplankton populations would not decline, but species  
14 composition might be altered, for example toward greater abundance of  
15 toxic species . . . ." (UW Friday Harbor Lab Report Exhibit R-2).

16 The extent and nature of the possible problems is impossible to  
17 predict accurately because of the lack of data on water circulation  
18 in this particular part of the bay and the lack of baseline data on  
19 fauna populations, water quality, and recruitment of the adult  
20 population of clams, in addition to the above cited, lack of  
21 experience in aquaculture.

## 22 VI

23 For the reasons enumerated above, San Juan County felt that it was  
24 unable to produce a satisfactory Environmental Impact Statement because  
25 sufficient data is unavailable on the impact of this new technology.  
26 However, the county did have a unique resource available to it in the

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1 consideration of this matter, namely, the University of Washington  
2 Friday Harbor Laboratories. The county received reports of the possible  
3 adverse impact and recommendations of a monitoring program to observe  
4 and measure any adverse impacts on the bay.

## 5 VII

6 As a result of their consultation with the University of Washington  
7 Friday Harbor Laboratories, the county has established a monitoring  
8 project to apprise themselves of any potential harmful impact on the  
9 waters of Westcott Bay arising from the proposed project. The permit, as  
10 issued, required that a written agreement be entered into between the  
11 University Laboratories and the developers to monitor the impact on the  
12 bay and see that excessive degradation does not occur as a result of  
13 this project.

14 The Agreement entered into between the Friday Harbor Laboratories  
15 and the developers (appearing as the last item in Exhibit R-7) provides  
16 for a series of standard tests which will monitor the following:  
17 flushing action in the bay, bivalve populations, water quality, and  
18 change in the bottom sediments (the latter to be provided by the Laboratory  
19 itself; the first three by the developer unless other funds are available)  
20 The data is to be submitted to the county planning department within  
21 three years of the date of the permit.

## 22 VIII

23 Subsequent to the issuance of the permit it was discovered that an  
24 Indian midden exists on the Webb property adjacent to the project in  
25 part. There are a number of such sites in the San Juan Islands,  
26 apparently, and the state authorities are reluctant to release data on

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1 their presence because of the danger of souvenir hunters so the county was  
2 apprised of the present site tardily. Appellants expressed some concern  
3 with the preservation of this site. It appears that the aquaculture  
4 project will have little direct impact on the archaeological site and  
5 that the only impact will be a preexisting road whose entire width inter-  
6 sects a 12-14 inch wide compacted portion of the midden. We note that  
7 Mr. Webb has had extensive background in archaeological matters and has  
8 already been active in the preservation of items recovered from the  
9 midden, and has preserved the site.

#### 10 IX

11 Any Conclusion of Law hereinafter cited which should be deemed a  
12 Finding of Fact is hereby adopted as such.

#### 13 CONCLUSIONS OF LAW

##### 14 I

15 The Shorelines Hearings Board has jurisdiction of the parties and of  
16 the subject matter of this hearing.

##### 17 II

18 We cannot conclude that the failure to issue an Environmental Impact  
19 Statement in this instance was a fatal error. Expert testimony leads us  
20 to the inescapable conclusion that it was not possible for the county to  
21 predict the impact of this new technology in advance. The evidence  
22 adduces that the decision-makers had before them reports outlining  
23 possible environmental effects and wide public comment. This we believe  
24 permitted them to render an informed decision as mandated by the State  
25 Environmental Policy Act. Absent specific procedural guidelines, the  
26 county acted reasonably in making what it called a "negative declaration,"

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1 putting the developer at risk and requiring an effective monitoring  
2 program. We note that aquaculture, being water-dependent, is a preferred  
3 use of the shoreline in question under RCW 90.58. We note further that  
4 the waters suitable for this preferred use are limited. The cumulative  
5 impact of these facts leads us to conclude that the county acted reason-  
6 ably in allowing this aquaculture project. The only other alternative  
7 available would have been a denial of the project on the basis of possible  
8 environmental impacts inasmuch as no Environmental Impact Statement could  
9 have been prepared with any degree of certainty. We believe that this  
10 would have been contrary to the policies of the Shoreline Management Act  
11 which promotes and fosters reasonable uses of the shoreline.

12 We come to this conclusion fully aware that we are emphasizing the  
13 importance of aquaculture, particularly in its protein potential for a  
14 world facing a critical food shortage. The production of food, indeed,  
15 may be a most "reasonable" use of certain shoreline areas. This is not  
16 to say that this Board now is giving blanket approval to all shoreline  
17 aquaculture projects. But we are saying firmly that in specific  
18 circumstances with adequate environmental safeguards--as we find in the  
19 instant matter--aquaculture is a desired and preferred water-dependent  
20 use of the shoreline.

### 21 III

22 The County Shoreline Master Plan had not designated the environment  
23 of the site in question at the time of permit issuance. However, we find  
24 that aquaculture was a permitted use in all environments in the plan  
25 as it existed when the permit was issued, so we cannot rule that the  
26 project is at variance with the master plan. We therefore find that the

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1 project was in conformity to the master plan "so far as can be ascertained"  
2 (RCW 90.58.140(2)(a)(iii)).

3 IV

4 Appellants have asserted that the project in question is a commercial  
5 use which is in conflict with the national historic site and the  
6 predominantly residential character of the neighborhood in question.  
7 Appellants have directed our attention to no law so providing, and we  
8 ourselves can find no law that states aquaculture is a commercial use.  
9 Attacking the problem from another perspective we do not see aquaculture  
10 as one of the ordinary types of commercial uses. (4 Williams, American  
11 Land Planning Law, § 94.01). The applicable guidelines also distinguish  
12 aquaculture from commercial uses (WAC 1<sup>7</sup>3-16-060).

13 Rather, we must agree with the respondents that aquaculture is mor-  
14 nearly akin to an agricultural use, being chiefly involved with the  
15 raising and propagation of animals, and therefore compatible with  
16 adjoining residential uses. We note also that the small amount of  
17 traffic generated by the proposed project would not seriously interfere  
18 with the neighboring residences. Were a processing plant or similar  
19 industrial use to go into this site, it would be a different matter.

20 V

21 We note that Wescott Bay is used for navigation purposes and overnigh-  
22 moorages to some extent. However, we do not believe that the proposed  
23 project seriously interferes with large boats going in and out of the bay  
24 inasmuch as adequate room remains in the channel fronting the project  
25 for their passage. Marker buoys will also clearly indicate the navig-  
26 able portion of the passage. Sufficient room also remains for whatever

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1 use water skiers make of the bay. As such, the project appears to  
2 conform to the Act and applicable guidelines in this respect  
3 (WAC 173-16-060(2)). The area in the channel and at the project site  
4 may not be available for moorage, but we are convinced from the evidence  
5 that sufficient room remains in Westcott Bay for this use.

## 6 VI

7 We find that the project is comprised of sufficiently discreet  
8 elements to allow separate consideration of the permit in question and  
9 any subsequent development which may occur on the site. Given the tentative  
10 and experimental nature of this enterprise it is reasonable and  
11 permissible to permit the respondents to proceed with a portion of the  
12 project until they can determine if it is biologically and economically  
13 feasible.

## 14 VII

15 The instant project appears to this Board as scenically inobtrusive  
16 as shoreline development could be. It will be invisible from English  
17 Camp and not easily seen from the adjoining residences. During most tidal  
18 conditions the grow-out facilities will be beneath the water and the only  
19 visible portion will be the buoys placed as an aid to navigation. We  
20 construe such buoys as a necessary and reasonable part of the shoreline  
21 environment. We cannot rule that the view of a substantial number of  
22 residences will be obstructed by the proposed project.

## 23 VIII

24 During the hearing, appellants raised the issue of whether the  
25 proposed grow-out trays are adequate structurally. Even if this issue  
26 had been raised timely, we would conclude that appellants did not prove

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1 that the structures will be inadequate. We note additionally that (a)  
2 the aquaculture promoters have a real economic interest in preventing  
3 the break up of these structures and (b) that we cannot conclude that  
4 any significant ecological damage would be done even if the modules do  
5 come adrift and wash up on neighboring beaches.

6 IX

7 Finally, we note that the County Master Plan calls for archaeo-  
8 logical sites to be preserved and identified. We find that the county  
9 has attempted to identify and preserve the site in question and has not  
10 acted to its detriment on the face of this permit. We do not believe  
11 appellants have proven that disuse of the road in question would reduce  
12 whatever damage has already occurred on that portion of the midden.

13 X

14 Any Finding of Fact which should be deemed a Conclusion of Law  
15 is hereby adopted as such.

16 ORDER

17 San Juan County Shoreline Permit 7-SJ-75 issued to William Robert  
18 and Doree F. Webb is hereby affirmed with the following added conditions:

19 1. That respondent Webb's substantial development not intrude on  
20 any area of archaeological significance on their property beyond the  
21 intrusion already presented by the extant road to the dock at the site;

22 2. That San Juan County will be apprised of the results of  
23 the monitoring program of the University of Washington Friday Harbor  
24 Laboratories as they become available and will act to rescind the  
25 permit immediately when any of the monitored elements go beyond tolerable  
26 limits as described in the Agreement of the University of Washington

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1 Friday Harbor Laboratories, with D. Strickland and Thomas Starr for  
2 monitoring of the Westcott Bay aquaculture project.

3 DATED this 3d day of June, 1976.

4 SHORELINES HEARINGS BOARD

5 Chris Smith  
6 CHRIS SMITH, Chairman

7 Robert E. Beaty  
8 ROBERT E. BEATY, Member

9 Robert F. Hintz  
10 ROBERT F. HINTZ, Member

11 Gerald D. Probst  
12 GERALD D. PROBST, Member

13 Walt Woodward  
14 WALT WOODWARD, Member

